

Small Business Administration

§ 120.938

§ 120.926 Referral fee.

The CDC can receive a reasonable referral fee from the Third Party Lender if the CDC secured the Third Party Lender for the Borrower under a written contract between the CDC and the Third Party Lender. Both the CDC and the Third Party Lender are prohibited from charging this fee to the Borrower. If a CDC charges a referral fee, the CDC will be construed as a Referral Agent under part 103 of this chapter.

[68 FR 57988, Oct. 7, 2003]

504 LOANS AND DEBENTURES

§ 120.930 Amount.

(a) Generally, a 504 loan may not exceed 40 percent of total Project cost plus 100 percent of eligible administrative costs. For good cause shown, SBA may authorize an increase in the percentage of Project costs covered up to 50 percent. No more than 50 percent of eligible Project costs can be from Federal sources, whether received directly or indirectly through an intermediary.

(b) A 504 loan must not be less than \$25,000.

(c) Upon completion of the Project, the Debenture amount will be reduced by the amount that the unused contingency reserve exceeds 2 percent of the anticipated Debenture.

[61 FR 3235, Jan. 31, 1996, as amended at 68 FR 57988, Oct. 7, 2003]

§ 120.931 504 Lending limits.

The outstanding balance of all SBA financial assistance to a Borrower and its affiliates under the 504 program covered by this part must not exceed \$1,000,000 (or \$1,300,000 if one or more of the public policy goals enumerated in § 120.862(b) applies to the Project).

[68 FR 57988, Oct. 7, 2003]

§ 120.932 Interest rate.

The interest rate of the 504 Loan and the Debenture which funds it is set by the SBA and approved by the Secretary of the Treasury.

§ 120.933 Maturity.

From time to time, SBA will publish in the FEDERAL REGISTER the available maturities for a 504 loan and the De-

benture that funds it. Such available maturities remain in effect until changed by subsequent FEDERAL REGISTER publication.

[68 FR 57988, Oct. 7, 2003]

§ 120.934 Collateral.

The CDC usually takes a second lien position on the Project Property to secure the 504 loan. Sometimes additional collateral is required. (In rare circumstances, SBA may permit other collateral substituted for Project Property.) All collateral must be insured against such hazards and risks as SBA may require, with provisions for notice to SBA and the CDC in the event of impending lapse of coverage.

[68 FR 57988, Oct. 7, 2003]

§ 120.935 Deposit from the Borrower that a CDC may require.

At the time of application for a 504 loan, the CDC may require a deposit from the Borrower of \$2,500 or 1 percent of the Net Debenture Proceeds, whichever is less. The deposit may be applied to the loan processing fee if the application is accepted, but must be refunded if the application is denied. If the small business withdraws its application, the CDC may deduct from the deposit reasonable costs incurred in packaging and processing the application.

§ 120.937 Assumption.

A 504 loan may be assumed with SBA's prior written approval.

§ 120.938 Default.

(a) Upon occurrence of an event of default specified in the 504 note which requires automatic acceleration, the note becomes due and payable. Upon occurrence of an event of default which does not require automatic acceleration, SBA may forbear acceleration of the note and attempt to resolve the default. If the default is not cured subsequently, the note shall be accelerated. In either case, upon acceleration of the note, the Debenture which funded it is also due immediately, and SBA must honor its guarantee of the Debenture. SBA shall not reimburse the investor for any premium paid.

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(b) If a CDC defaults on a Debenture, SBA generally shall limit its recovery to the payments made by the small business to the CDC on the loan made from the Debenture proceeds, and the collateral securing the defaulted loan. However, SBA will look to the CDC for the entire amount of the Debenture in the case of fraud, negligence, or misrepresentation by the CDC.

§ 120.939 Borrower prohibition.

Neither a Borrower nor an Associate of the Borrower may purchase an interest in a Debenture Pool in which the Debenture that funded its 504 loan has been placed.

§ 120.940 Prepayment of the 504 loan or Debenture.

The Borrower may prepay its 504 loan, if it pays the entire principal balance, unpaid interest, any unpaid fees, and any prepayment premium established in the note. If the Borrower prepays, the CDC must prepay the corresponding Debenture with interest and premium. If one of the Debentures in a Debenture Pool is prepaid, the Investors in that Debenture Pool must be paid pro rata, and SBA's guarantee on the entire Debenture Pool must be proportionately reduced. If the entire Debenture Pool is paid off, SBA may call all Certificates backed by the Pool for redemption.

§ 120.941 Certificates.

(a) The face value of a Certificate must be at least \$25,000. Certificates are issued in registered form and transferred only by entry on the central registry maintained by the Trustee. SBA guarantees the timely payment of principal and interest on the Certificates.

(b) Before the sale of a Certificate, the seller, or the broker or dealer acting as the seller's agent, must disclose to the purchaser the terms, conditions, yield, and premium and other characteristics not guaranteed by SBA.

DEBENTURE SALES AND SERVICE AGENTS

§ 120.950 SBA and CDC must appoint agents.

SBA and the CDC must appoint the following agents to facilitate the sale

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and service of the Certificates and disbursement of the proceeds.

§ 120.951 Selling agent.

The CDC, with SBA approval, shall appoint a Selling Agent to select underwriters, negotiate the terms and conditions of Debenture offerings with the underwriters, and direct and coordinate Debenture sales.

§ 120.952 Fiscal agent.

SBA shall appoint a Fiscal Agent to assess the financial markets, minimize the cost of sales, arrange for the production of the Offering Circular, Debenture Certificates, and other required documents, and monitor the performance of the Trustee and the underwriters.

§ 120.953 Trustee.

SBA must appoint a Trustee to:

- (a) Issue Certificates;
- (b) Transfer the Certificates upon resale in the secondary market;
- (c) Maintain physical possession of the Debentures for SBA and the Certificate holders;
- (d) Establish and maintain a central registry of:
 - (1) Debenture Pools, including the CDC obligors and the interest rate payable on the Debentures in each Pool;
 - (2) Certificates issued or transferred, including the Debenture Pool backing the Certificate, name and address of the purchaser, price paid, the interest rate on the Certificate, and fees or charges assessed by the transferrer; and
 - (3) Brokers and dealers in Certificates, and the commissions, fees or discounts granted to the brokers and dealers;
- (e) Receive semi-annual Debenture payments and prepayments;
- (f) Make regularly scheduled and prepayment payments to Investors; and
- (g) Assure before any resale of a Debenture or Certificate is recorded in the registry that the seller has provided the purchaser a written disclosure statement approved by SBA.

§ 120.954 Central Servicing Agent.

(a) SBA has entered into a Master Servicing Agreement designating a